

9.505-3

on the basis of work statements growing out of their services, unless excepted in subparagraph (1) above.

(3) For the reasons given in 9.505-2(a)(3), no prohibitions are imposed on development and design contractors.

9.505-3 Providing evaluation services.

Contracts for the evaluation of offers for products or services shall not be awarded to a contractor that will evaluate its own offers for products or services, or those of a competitor, without proper safeguards to ensure objectivity to protect the Government's interests.

[62 FR 12694, Mar. 17, 1997]

9.505-4 Obtaining access to proprietary information.

(a) When a contractor requires proprietary information from others to perform a Government contract and can use the leverage of the contract to obtain it, the contractor may gain an unfair competitive advantage unless restrictions are imposed. These restrictions protect the information and encourage companies to provide it when necessary for contract performance. They are not intended to protect information (1) furnished voluntarily without limitations on its use or (2) available to the Government or contractor from other sources without restriction.

(b) A contractor that gains access to proprietary information of other companies in performing advisory and assistance services for the Government must agree with the other companies to protect their information from unauthorized use or disclosure for as long as it remains proprietary and refrain from using the information for any purpose other than that for which it was furnished. The contracting officer shall obtain copies of these agreements and ensure that they are properly executed.

(c) Contractors also obtain proprietary and source selection information by acquiring the services of marketing consultants which, if used in connection with an acquisition, may give the contractor an unfair competitive advantage. Contractors should make inquiries of marketing consultants to ensure that the marketing consultant has

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provided no unfair competitive advantage.

[48 FR 42142, Sept. 19, 1983, as amended at 55 FR 42686, Oct. 22, 1990; 56 FR 55377, Oct. 25, 1991; 62 FR 235, Jan. 2, 1997]

9.506 Procedures.

(a) If information concerning prospective contractors is necessary to identify and evaluate potential organizational conflicts of interest or to develop recommended actions, contracting officers should first seek the information from within the Government or from other readily available sources. Government sources include the files and the knowledge of personnel within the contracting office, other contracting offices, the cognizant contract administration and audit activities and offices concerned with contract financing. Non-Government sources include publications and commercial services, such as credit rating services, trade and financial journals, and business directories and registers.

(b) If the contracting officer decides that a particular acquisition involves a significant potential organizational conflict of interest, the contracting officer shall, before issuing the solicitation, submit for approval to the chief of the contracting office (unless a higher level official is designated by the agency)—

(1) A written analysis, including a recommended course of action for avoiding, neutralizing, or mitigating the conflict, based on the general rules in 9.505 or on another basis not expressly stated in that section;

(2) A draft solicitation provision (see 9.507-1); and

(3) If appropriate, a proposed contract clause (see 9.507-2).

(c) The approving official shall—

(1) Review the contracting officer's analysis and recommended course of action, including the draft provision and any proposed clause;

(2) Consider the benefits and detriments to the Government and prospective contractors; and

(3) Approve, modify, or reject the recommendations in writing.

(d) The contracting officer shall—

(1) Include the approved provision(s) and any approved clause(s) in the solicitation or the contract, or both;